THE HON'BLE SRI JUSTIE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.8861 of 2006

Dated: 10.07.2006

Between:

Telangana Municipal Employees Association, Hyderabad rep.,by its President Tahj Mohan Reddy.

…. Petitioner.

And

The Driector of; Municipal Administration, A.P., Hyderabad and two others.

…

Respondents.

THE HON'BLE SRI JUSTIE B.PRAKASH RAO
AND
THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

W.P.No.8861 of 2006

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

Aggrieved by the order in O.A.No.3468 of 2004 dated 6.10.2005, to the extent the A.P.A.T held that the petitioner – Association had no locus standi to get impleaded in O.A.No.3468 of 2004, the present writ petition is filed. The petitioner seeks a consequential direction that the Association be declared as being entitled to be impleaded as a party respondent in W.P.No.22597 of 2005 filed by the 3rd respondent herein.

Facts in brief are that O.A.No.3468 of 2004 was filed by the 3rd respondent herein seeking to have the order of suspension passed against him by the 2nd respondent, vide proceedings dated 19.6.2004, set aside. The Tribunal, while dismissing O.A.3468/2004 by order dated 6.10.2005, held thus:

"……..The Telangana Municipal Employees Association, Hyderabad, represented by its President, has filed M.A.1541/2005 and VMA 399/05 seeking impleadment in the present O.A. The subject matter of this O.A. is an order of suspension. The official respondents have exercised their power and placed the applicant under suspension. The proposed party respondent is the Employees Association. As the lis is between the applicant and the unofficial respondent, the Employees Association has no locus standi to get impleaded in the matter of Original Application and contest the claim of the applicant. According to the provisions of Administrative Tribunals Act, the aggrieved person alone can file an application before this Tribunal, complaining violation of any conditions of service. It would be difficult for them as to how, any cause is available for the Applicants Association with respect to placing the applicant under suspension. The official respondents have taken enough care to see that the enquiry is conducted. In view of the provisions contained in Administrative Tribunal Act, relaxing the fresh Rules of locus standi does not arise. Therefore, Telangana Municipal Employees Association has no locus standi to contest an order of suspension, passed against the applicant. M.A. and VMA are therefore rejected……."

The Tribunal, however, having regard to the allegations that the 3rd respondent herein had secured employment by making false representation which amounted to gross misconduct, held that no interference against the order of suspension was called for

and accordingly dismissed the O.A. Aggrieved by the order passed in O.A.3468 of 2004, the 3rd respondent herein filed W.P.No.22597 of 2005 and this Court, by order in W.P.M.P.28914 of 2005 dated 26.10.2005, suspended the impugned order of suspension.

The petitioner – association contends that since the grave charges leveled against the third respondent require an enquiry to be conducted, it was for the 3rd respondent to face the enquiry and prove his innocence, and that the order placing him under suspension pending enquiry was legal and valid. Petitioner contends that the observations of the A.P.A.T that their association had no locus standi to get impleaded in the O.A. is erroneous and illegal, as the consequence of continuing the 3rd respondent in service had resulted in denial of the legitimate claims of members of their association, for being appointed/promoted as a junior assistant.

Sri J.R.Manohara Rao, learned counsel for the petitioner, would submit that in matters where grave and serious allegations of misconduct are made and an employee is placed under suspension, the employees association, whose paramount interest is in ensuring integrity of public servants and purity of public administration, are also entitled to an opportunity of being heard. Learned counsel would place reliance on two judgments of the Full Bench of this Court in **G.Malakonda Reddy v. Andhra Bank Officers Union**[1] and **P.V.S.V. Prasada Rao v. Andhra University**[2], in this regard. Learned Government Pleader for Services would contend that the petitioner association is not an

aggrieved person in such individual disputes of suspension pending enquiry and as such does not have locus standi. He would submit that even if the petitioner association is said to have acted in public interest, no union can file a public interest litigation in service matters. Learned Government Pleader would rely on **Duryodhan Sahu v. Jitender Kumar Mishra**[3].

In **G.Malakonda Reddy**[1] the Full Bench of this Court held thus:

"……..There is no manner of doubt, however, that the two petitioners who have claimed to be Associations of individuals are not recognized as a legal entity or a juristic person except in so far as individual interests of the members of the two Associations/Unions are concerned. They are neither registered as a Society under any enactment or a Statute, nor are recognized as such by any competent authority under any Statute. Since, however, learned single Judge has observed that individuals who have constituted the Employees' Union have complained of adverse effect upon their promotional avenues on account of such alteration in the Date of Birth, which according to them, has been done illegally, we see no ground to hold that because the two writ petitioners – respondents have not satisfied the norm of a juristic person and thus of a legal entity in the capacity of Association of individuals or that they do not have locus standi……."

In **P.V.S.V.Prasad Rao**[2], the Full Bench held thus:

"……..The dominant object of PIL is to ensure observance of provisions of constitution or law so as to advance the cause of the community or disadvantage groups by permitting any person acting bona fide to knock at the doors of the Court. In Vinoy Kumar v. State of U.P. (JT 2001 (4) SC 506), it was observed that, "in every case filed in public interest the Court can exercise writ jurisdiction at the instance of third party only when it is shown that legal wrong or legal injury or illegal burden is threatened and a determined class of persons by reasons of disability of social backwardness is unable to approach the Court for relief". Can this principle be extended to service jurisprudence as well? In Court's considered opinion, in an appropriate case, PIL jurisdiction can be used to check the arbitrary exercise of appointing power in the field of public employment, guaranteed by Constitution of India to all citizens. Any arbitrary discharge of public functions in relation to public employment would negate the fundamental rights guaranteed under Article 16 of the Constitution of India. When such complaint is made, may be by unconcerned persons, the Court cannot be gobbed down by technical rules of locus standi……"

In **G.Malakonda Reddy[1],** the learned single judge of this Court had observed that individuals who were members of the union had complained of an adverse effect upon their promotional avenues on account of appellant's illegal continuation in service. In view of the said observation of the learned single Judge, the Full Bench saw no ground to non-suit the union or to hold that they did not have locus standi merely because they did not satisfy the requirement of a normal juristic person or that of a legal entity in their capacity of an association of individuals.

In **P.V.S.V. Prasada Rao[2]**, a Full Bench of this Court held that in an appropriate case public interest litigation jurisdiction could be extended to service jurisprudence to check arbitrary exercise of the appointing power in the field of public employment, guaranteed by the Constitution to all citizens, since any arbitrary discharge of public functions in relation to public employment, resulted in negation of the fundamental rights guaranteed under Article 16 of the Constitution of India and when such complaints were filed, even if they be by unconcerned persons, Courts ought not to be bogged down by technical rules of locus standi. In **P.V.S.V.Prasada Rao[2]** the questions which arose for consideration before the Full Bench were:

1. Whether the principles of reservation have to be applied in each department, treating it as Unit or group wise?
2. Whether the posts reserved for respective categories have to be notified right at the time of the selection process is initiated or not?
3. Whether the University is justified in appointing and filling in more number of vacancies than notified?
4. Whether the University is justified in filling up anticipated vacancies?

5. Whether the University is justified in considering the candidates who acquired the qualifications later than the last date for submission of applications?

6. Whether the University is justified in appointing candidates who do not possess the qualifications necessary for the posts?

7. Whether the University is justified in interfering with the merit ranking assigned by selection committee without recording any reasons?

8. Whether the University is justified in selecting and appointing candidates to a different post, than the one for which they were subjected to selections?

9. Whether the University is justified in approving the selections, which lack objectivity?

The aforesaid issues, which arose for consideration before the Full Bench, related to direct recruitment and the illegal action of the University in not only giving a go by to the rule of reservation but also in filling up posts contrary to the very notification issued by them. The matter which arose for consideration before the Full Bench was not an individual grievance relating to the suspension of an employee pending enquiry. The judgment of the Full Bench of this Court has therefore no application to the facts of the present case.

In **Dr.Duryodhan Sahu**[3] the Supreme Court held thus:

".....The constitution of Administrative Tribunals was necessitated because of the large pendency of cases relating to service matters in various courts in the country. It was expected that the setting up of Administrative Tribunals to deal exclusively in service matters would go a long way in not only reducing the burden of the courts but also provide to the persons covered by the Tribunals speedy relief in respect of their grievances. The basic idea as evident from the various provisions of the Act is that the Tribunal should quickly redress the grievances in relation to service matters. The definition of "service matters" found in Section 3(*q*) shows that in relation to a person, the expression means all service matters relating to the conditions of his service. The significance of the word "his" cannot be ignored. Section 3(*b*) defines the word "application" as an application made under Section 19. The latter section refers to "person

aggrieved". In order to bring a matter before the Tribunal, an application has to be made and the same can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal. We have already seen that the word "order" has been defined in the explanation to sub-section (1) of Section 19 so that all matters referred to in Section 3(*q*) as service matters could be brought before the Tribunal. **If in that context Sections 14 and 15 are read, there is no doubt that a total stranger to the service concerned cannot make an application before the Tribunal. If public interest litigations at the instance of strangers are allowed to be entertained by the Tribunal, the very object of speedy disposal of service matters would get defeated**……"

Our attention has been drawn to a judgment of the Orissa Administrative Tribunal in *Amitarani Khuntia* v. *State of Orissa* : 1996 (1) Orissa LR (CSR). The Tribunal after considering the provisions of the Act held that a private citizen or a stranger having no existing right to any post and not intrinsically concerned with any service matter is not entitled to approach the Tribunal. The following passage in the judgment is relevant:

> **"... A reading of the aforesaid provisions would mean that an application for redressal of grievances could be filed only by a 'person aggrieved' within the meaning of the Act.**
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> **Tribunals are constituted under Article 323-A of the Constitution of India. The above article empowers Parliament to enact law providing for adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government and such law shall specify the jurisdiction, powers and authority which may be exercised by each of the said Tribunals. Thus, it follows that Administrative Tribunals are constituted for adjudication or trial of the disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts. Its jurisdiction and powers have been well defined in the Act. It does not enjoy any plenary power.We agree with the above reasoning**"

……..**In the result, we answer the first question in the negative and hold that the Administrative Tribunal constituted under the Act cannot entertain a public interest litigation at the instance of a total stranger**……..."(emphasis supplied)

In **Ashok Kumar Pandey v. State of W.B.**[4] the Supreme Court held thus:-

"……..As noted supra, a time has come to weed out the petitions, which though titled as public interest litigations are in essence something else. It is shocking to note that courts are flooded with a large number of so-called public interest litigations where even a minuscule percentage can legitimately be called public interest litigations. Though the parameters of public interest

litigation have been indicated by this Court in a large number of cases, yet unmindful of the real intentions and objectives, courts are entertaining such petitions and wasting valuable judicial time which, as noted above, could be otherwise utilized for disposal of genuine cases. **Though *in Duryodhan Sahu (Dr) v. Jitendra Kumar Mishar(AIR 1999 SC 114)* this Court held that in service matters PILs should not be entertained, the inflow of so-called PILs involving service matters continues unabated in the courts and strangely are entertained. The least the High Courts could do is to throw them out on the basis of the said decision**. The other interesting aspect is that in the PILs, official documents are being annexed without even indicating as to how the petitioner came to possess them. In one case, it was noticed that an interesting answer was given as to its possession. It was stated that a packet was lying on the road and when out of curiosity the petitioner opened it, he found copies of the official documents. Whenever such frivolous pleas are taken to explain possession, the courts should do well not only to dismiss the petitions but also to impose exemplary costs. It would be desirable for the courts to filter out the frivolous petitions and dismiss them with costs as aforestated so that the message goes in the right direction that petitions filed with oblique motive do not have the approval of the courts……..”

This principle has been reiterated in **B. Singh (Dr) v. Union of India**[5], **Dattaraj Nathuji Thaware v. State of Maharashtra**[6] and **Gurpal Singh v. State of Punjab**[7]**.**

As held in **Dr.Duryodhan Sahu**[3] in order to bring a matter before a Tribunal, an application can be made only by a person aggrieved by any order pertaining to any matter within the jurisdiction of the Tribunal and when Sections 14 and 15 of the Administrative Tribunals Act are read in that context, a total stranger to the service concerned cannot make an application before the Tribunal since entertaining a public interest litigation at the instance of strangers would defeat the very object of speedy disposal of service matters by the Tribunal. In the case on hand the order of suspension, of the 3rd respondent, is in issue. It is well settled that it is in the employer’s discretion whether an employee should be suspended or not. Merely on account of his

being suspended from service pending enquiry the employee-employer relationship does not cease and the person suspended continues to remain an employee of the employer, though he is not permitted to perform his duties as an employee. The contention of the petitioner association that the chances of promotion of their members would be affected if the order of suspension of the 3rd respondent were to be suspended or set aside by courts/tribunals does not, therefore, merit acceptance.

If, as contended by the petitioner, the cause espoused by them, regarding suspension of the 3rd respondent, if as contended by them is in public interest of ensuring clean, efficient and pure public administration, such public; interest litigation in service matters cannot be entertained by Courts/Tribunals in view of the law laid down by the Apex Court in **Dr.Duryodhan Sahu**[3], **Ashok Kumar Pandey**[4], **Dr.B.Singh**[5], **D.N.Thaware**[6] and **Gurpal Singh**[7].

The Tribunal, in our view, was justified in holding that the petitioner association had no locus standi and as such was not entitled to be impleaded in the O.A. filed by an individual employee questioning the orders of his suspension. The order of the Tribunal in O.A.3468 of 2004 dated 6.10.2005, to the limited extent the petitioner's association was held not to have locus standi to be impleaded as a party respondent, does not call for interference.

The writ petition fails and is accordingly dismissed. However, in the circumstances, without costs.

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B.PRAKASH RAO,J

Date: .07.2006

RAMESH RANGANATHAN,J

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[1] (1997(6) ALT 90 (FB)

[2] (2006(1) ALT 785 (FB)

[3] 1998(7) SCC 273

[4] (2004) 3 SCC 349

[5] (2004) 3 SCC 363

[6] (2005) 1 SCC 590

[7] (2005) 5 SCC 136